IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5755 of 1999

with
SPECIAL CIVIL APPLICATION NO. 5756 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHAUKATALI HAIDERALI SAIYED AND OTHERS

Versus

FOOD CONTROLLER

Appearance:
MR BN RAVAL for Petitioner
MR M.A.BUKHARI, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 27/03/2000

ORAL JUDGEMENT

Rule. Mr. M.A. Bukhari, learned AGP appears for the

respondents and waives service of rule on their behalf. In the facts and circumstances, the matters are taken up for final hearing today.

Both these petitions are filed for an appropriate writ, order or direction directing the respondent authorities to supply kerosene so as to enable them to sell it to constomers for which necessary licence was granted to them.

The case of the petitioners was that in pursuance of the policy of the State Government for distributing kerosene to licence holders, applications were invited and licences were decided to be issued. It was stated in the petitions that both the petitioners were informed vide communication, dated 22nd/27th March, 1995 ,annexed to both petitions, that in pursuance of the applications made by them, their prayer for licence as a dealer in kerosene was granted. Each of the petitioners was asked to pay an amount of Rs. 35/- as fee and Rs. 750/- as deposit along with two photographs . Both of them were asked to personally go to the office of Food and Civil Supplies department, Ahmedabad. According to the petitioners, they had gone to the said office and paid necessary amount towards fee and deposit and licences were issued in their favour. The commodity, however, was not supplied to them. They had,therefore,requested the authorities by making several representations from time to time but of no avil. Kerosene was never supplied to them. They were,therefore, constrained to approach this Court.

In the petitions, it was alleged that in the year 1994, about 15 persons were granted such licence and out of those 15 persons, more than 10 persons were supplied the commodity, but it was not supplied to the petitioners. Said action was, therefore, illegal and unreasonable.

I have heard the parties .

Contention of Mr Raval for the petitioners is that when applications were made by the petitioners and they were granted licence and had complied all the conditions of payment of fees and deposit, there was no earthly reason not to supply kerosene to them. Said action was,therefore, illegal and arbitrary. It was also contended that as stated in the petitions, about 15 persons were granted such licence and more than 10 persons were supplied the commodity , but it was not done in the case of petitioners. Said action was,therefore,

contrary to law and violative of Article 14 of the Constitution.

Respondents have filed an affidavit wherein the action was sought to be justified on the grounds mentioned therein.

My attention was invited by Mr. Bukhari ,learned AGP to a communication, dated August 20, 1997 addressed by the Additional MOH, West Zone, to the Director/ Food Controller, Civil Supplies, Ahmedabad wherein it was stated that some persons had obtained licence to sell kerosene on false/fabricated/concocted names . Their names were mentioned in the said communication as under:

1. Gopalbhai Dhansing Verma
2. Yunusbhai Habibbhai Sheikh
3. Shaukatali Haiderali.

It may be stated that No.3 mentioned in the list was Shaukatali Haiderali Saiyed (petitioner of SCA No. 5855 of 1999).

It is not in dispute that the letter addressed by the Addl. M.O.H was not sent to any of the petitioners. Once licence was granted in favour of the petitioners, it was incumbent on the authorities to supply essential commodity . There was no reason why differential treatment was meted out to the petitioners. The action, therefore, deserves to be quashed and set aside. It is, however,clarified that if the respondents are of the view that in the facts and circumstances, any action is required to be taken against the petitioners or any of them, it will be open to them to take such action after complying with principles of natural justice and judgment in these matters will not come in the way of the authorities in taking such action. Petitions are accordingly allowed. Rule is made absolute to the above extent. No order as to costs.

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parekh